IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 21416 of 2003

Between:

1 Sri Baddam Mallesh Yadav, s/o late Komaraiah
8-3-898/34/A, Yellareddyguda, Nagarjuna Nagar Colony,
Hyderabad.
2 Sri Boddam Mahesh Yadav, s/o Mallesh Yadav.
3 Sri Boddam Santosh Yadav, s/o Mallesh Yadav.
4 Sri Boddam Anand Yadav, son of Mallesh Yadav.

..... PETITIONERS

AND

1 Municipal Corporation of Hyderabad having it office

at Tank Bund, Hyderabad, rep. by its Commissioner.
2 Asst. City Planner, T.P.Section, Circle V, Municipal
Corporation of Hyderabad, Khairatabad, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction in the nature of Mandamus or otherwise declaring that the action of the Respondents in issuing Notice under Sec.452 of the HMC Act (Annexure II) dated 15-9-2003 and further threatened action of demolition is illegal, arbitrary and ultravires the powers of the Respondents and further amounts to adjudicating on the issues which are subject matter of OS No.985/2003 pending before the IV Junior Civil Judge, City Civil Court, Hyderabad and as such forbear the respondents from demolition obstructing or otherwise interfering with the petitioner's construction of Cellar, Ground, First and Second Floors at premises No.7-1-159, Ameerpet, Hyderabad in any manner whatsoever and be pleased to pass such other order or orders

Counsel for the Petitioners : R.VILAS V.AFZULPURKAR

Counsel for the Respondents: SMT.G.JYOTHI KIRAN

The Court made the following :

ORDER :

The petitioners are owners of property admeasuring
352 Sq.Yards in Survey No.33 (Municipal No.7-1-159), Ameerpet, Hyderabad. They submitted an application seeking permission for construction of ground + two floors. Having waited for the statutory period of thirty days, the petitioners allegedly served a notice dated 3-2-2003 on the respondent-Corporation informing that they are starting construction of Commercial Complex as per the revised plan dated 2-1-2003. When the work was in progress, a notice dated 7-2-2003 was served on them. Therefore, apprehending demolition of the constructed portion, the petitioners filed a suit being O.S.No.985 of 2003 on the file of the Court of IV Junior Civil Judge, City Civil Court, Hyderabad. They also filed interlocutory application being I.A.No.175 of 203 for exparte
ad-interim injunction. By order dated 11-2-2003 the said Court passed the order of injunction and made certain observations. Again the respondent-Corporation issued a notice purporting to be under Section 452(2) of Hyderabad Municipal Corporation Act,1955 (for brevity 'the HMC Act') assailing which the present writ petition is filed.

This Court while admitting the writ petition passed interim order in W.P.M.P.No.26740 of 2003, dated 1-10-2003 staying demolition pursuant to the impugned order. When W.V.M.P.No.2582 of 2004 filed by the Commissioner, Municipal Corporation of Hyderabad, is listed before this Court, with the consent of the parties, the matter was heard finally.

Learned counsel for the petitioner Sri Vilas V.Afzulpurkar submits that the impugned order is bad and illegal for the reason that the same tends to modify the order of injunction granted by the Civil Court. He further submits that if the Corporation had come to a decision that the petitioners have constructed the building in contravention of the order of injunction, they ought to have moved the Civil Court instead of issuing the impugned order.

Per contra, the learned standing counsel for Municipal Corporation of Hyderabad submits that the petitioner was issued notice under Section 461 of the HMC Act on 7-2-2003 assailing which the suit was filed. The Civil Court while ordering ad-interim

exparte injunction gave liberty to the respondent-Corporation to initiate action against the petitioners in accordance with law. The petitioners proceeded with the construction, even thought there is no permission in the revised plan, therefore, the impugned order is sustainable.

The exparte ad-interim injunction passed by the Court of the IV Junior Civil Judge, City Civil Court, Hyderabad, in I.A.No.175 of 2003 reads as under.

Upon motion made upto this Court by Sri S.Malla Rao, Advocate for the petitioners/plaintiffs, upon perusal of the affidavit and the material records filed along with the suit and upon hearing the arguments of the learned counsel for the petitioners, this Court doth order and grant ad-interim injunction restraining the respondent, its officers, men servants, agents, workmen, person or persons acting under it from interfering with the construction of the petitioners over the petition schedule property in accordance with the revised plan submitted by the petitioners to the respondent till 18-3-2003.

> That the petitioners shall not deviate from the revised plan submitted by them during the course of further construction, under the guise of the above orders. If there are any deviations during the course of further constructions the respondent is at liberty to initiate action as against those deviations under due process of law.

Though the Civil Court restrained the Municipal Corporation of Hyderabad and its officials from interfering with the construction of the petitioners, the petitioners were directed not to deviate from the revised plan submitted by them and liberty was given to the Municipal Corporation of Hyderabad to take action in accordance with law if the petitioners resort to deviations. Therefore, I do no find any illegality or infirmity in the respondent-Corporation in issuing the notice under Section 452 of the HMC Act. Indeed, the impugned notice itself mentions that the petitioners resorted to unauthorized construction of Cellar, Ground and First floor in violation of the revised plan submitted and that such construction is against the order passed by the Civil Court in I.A.No.175 of 2003, dated 11-2-2003. On that ground, the impugned order cannot be invalidated. Be that as it is, after receiving the impugned order, the petitioners made a joint representation on 24-9-2003. The same will remains undisposed of.

Therefore, instead of expressing any opinion as to whether the petitioners have deviated from the alleged revised plan, which according to them deemed to have been approved under Section 437 of the HMC Act, the writ petition is disposed of directing the first respondent to consider the representation dated 24-9-2003 of the petitioners, within a period of two weeks from the date of receipt of a copy of this order and pass appropriate orders keeping in view the orders of injunction passed by the Civil Court. It shall be open to the petitioners to make further representation if any. It is also open to the first respondent-Corporation to move the Civil Court by filing appropriate application for vacating the exparte

ad-interim injunction. As and when such application is moved, the learned IV Junior Civil Judge shall dispose of the application within a period of two weeks thereafter.

The writ petition, with the above observations and directions, is disposed of. No costs.

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(V.V.S. RAO, J.)

Dt.07-09-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner, Municipal Corporation of Hyderabad,

Tank Bund, Hyderabad.
2 Asst. City Planner, T.P.Section, Circle V, Municipal
Corporation of Hyderabad, Khairatabad, Hyderabad.
3. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

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Dt.07-09-2004.

(Msr)